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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,152	08/27/2003	Harald Post	1810US01-EE	5019
43896	7590	11/04/2005	EXAMINER	
ECOLAB INC. MAIL STOP ESC-F7, 655 LONE OAK DRIVE EAGAN, MN 55121			MAYO, TARA L	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/649,152	POST, HARALD	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tara L. Mayo	3671	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-18 and 20-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-18 and 20-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20050316, 20050418</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 13 October 2005 has been entered.

### ***Information Disclosure Statement***

2. Updated copies of the information disclosure statements filed 16 March 2005 and 18 April 2005 have been attached.

### ***Specification***

3. The substitute Specification filed 18 April 2005 has been entered.

4. All prior objections to the Specification have been overcome by the responses filed 18 April 2005 and 13 October 2005.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 16 through 18, 20 through 24, 26 through 28, 30, 33, 34, and 42 through 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hemphill (U.S. Patent No. 5,150,487A) in view of Böttger et al. (U.S. Patent No. 5,582,893).

Hemphill '487, as seen in Figures 1 through 3, discloses a rescue underlay for a mattress comprising:

with regard to claims 16 and 43 through 45,

a. a substantially flat material (1, 2), wherein the material is substantially the size of a mattress;

b. at least one pull member (L); and

c. at least one patient securing belt (20 and 21);

with regard to claim 17,

further comprising at least one mattress retaining band (16 and 19);

with regard to claim 18,

wherein the material comprises plastic (col. 2, lines 48-54);

with regard to claim 22,

wherein the material is fire-resistant (col. 2, lines 48 through 54);

with regard to claim 23,

wherein the material further comprises a coating on the underside (col. 2, lines 48 through 54);

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with regard to claim 24,

wherein the coating is a plastic film (i.e., Teflon);

with regard to claim 26,

wherein the plastic film exhibits a lower sliding friction than the material;

with regard to claim 27,

wherein the coating is water-impermeable;

with regard to claim 28,

wherein the coating is washable;

with regard to claim 30,

wherein the coating is readily disinfected,

with regard to claim 33,

wherein the material comprises a plurality of layers (1 and 2) of substantially flat material fixedly attached to each other (col. 2, lines 54 through 56);

with regard to claim 34,

wherein the at least one patient securing belt is attached to the underlay mat by sewing (col. 3, lines 12 through 16);

with regard to claim 42,

wherein the at least one pull member is loop; and

with regard to claims 43 and 44,

wherein the material provides a spring travel.

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With regard to claim 45, the method steps recited therein are inherent to the use of the device disclosed by Hemphill '487.

Hemphill '487 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claims 16 and 43 through 45,

the material being a spacer woven fabric;

with regard to claim 20,

the spacer woven fabric being knitted; and

with regard to claim 21,

the spacer woven fabric having a thickness from about 4mm to about 20 mm.

Böttger et al. '893, as seen in Figures 1 through 1b, teach a woven spacing fabric (3) with at least two layers (4, 5) and bridge threads (7) for adding dimensional stability to a workpiece (col. 2, lines 20 through 52).

With regard to claims 16, 20 and 43 through 45, it would have been obvious to one having ordinary skill in the art of beds at the time of invention to modify the device shown by Hemphill '487 such that the flat material would be woven as taught by Böttger et al. '893. The motivation would have been to include a material having a relatively high tensile strength.

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With regard to claim 20, the manner of forming the woven material (i.e., by knitting) is not germane to the issue of patentability of the device itself. Therefore, the limitation has not been given patentable weight.

With regard to claim 21, Hemphill '487 in view of Böttger et al. '893 discloses the invention except for the thickness of the woven fabric. It would have been obvious to one having ordinary skill in the art of beds at the time the invention was made to make the material between 4mm and 20mm thick, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

7. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hemphill (U.S. Patent No. 5,150,487A) in view of Böttger et al. (U.S. Patent No. 5,582,893) as applied to claim 24 above, and further in view of Failor (U.S. Patent No. 5,860,174A).

Hemphill '487 as modified above by Böttger et al. '893 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claim 25,

the plastic film being selected from the group consisting of polyurethane, polyester, and combinations thereof.

Failor '174, as seen in Figures 2 and 4, discloses a patient transfer mattress assembly (10) comprising a top mattress section (12) having a bottom surface (12B), wherein the bottom

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surface comprises a fluoropolymer film (i.e., Teflon) combined with a polyester fabric substrate (col. 2, line 64 through col. 3, line 5) for low friction, chemical and flame resistance, and barrier properties.

With regard to claim 25, it would have been obvious to one having ordinary skill in the art of beds at the time of invention to modify the device shown by the combination of Hemphill '487 and Böttger et al. '893 such that it would include a plastic film as taught by Failor '174. The motivation would have been to enhance the barrier properties of the coating.

8. Claims 31 and 35 through 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hemphill (U.S. Patent No. 5,150,487A) in view of Böttger et al. (U.S. Patent No. 5,582,893).

The combination of Hemphill '487 and Böttger et al. '893 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claim 31,

the material further comprising a braking surface exhibiting a higher sliding friction than the material;

with regard to claims 35 through 38,

tunnel-like receptions;

with regard to claim 39,

three patient securing belts;

with regard to claim 40,



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the underlay being permanently affixed to a mattress; and  
with regard to claim 41,

the underlay being integrated into a mattress.

With regard to claim 31, it would have been obvious to one having ordinary skill in the art at the time of invention to modify the device shown by the combination of Hemphill '487 and Böttger et al. '893 such that it would include a braking surface. The motivation would have been to restrict the mobility of the mattress on the underlay.

With regard to claims 35 through 38, it would have been obvious to one having ordinary skill in the art of beds at the time the invention was made to modify the device shown by the combination of Hemphill '487 and Böttger et al. '893 such that it would include tunnel-like receptions for the patient securing belts to protect the same against wear during use, and to permit movement and/or replacement of the belts.

With regard to claim 39, the combination of Hemphill '487 and Böttger et al. '893 discloses the claimed invention except for three patient securing belts. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an additional patient securing belt, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

With regard to claims 40 and 41, the combination of Hemphill '487 and Böttger et al. '893 discloses the claimed invention except for the underlay being permanently affixed to or integrated into a mattress. It would have been obvious to one having ordinary skill in the art at

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the time the invention was made to make the underlay integral with a mattress, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. In re Lindber, 93 USPQ 23 (CCPA 1952).

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 16 through 18 and 20 through 45 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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31 October 2005

  
TARA L. MAYO  
PATENT EXAMINER